

# **Notice of Allowability**

Application No.

09/937,480

Examiner

Vincent P. Barth

Applicant(s)

MATSUNAGA ET AL.

Art Unit

2877

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--  
All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to Amendment dated 28 August 2003.
2. ☒ The allowed claim(s) is/are 1-65.
3. ☒ The drawings filed on 26 September 2001 are accepted by the Examiner.
4. ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) ☒ All b) ☐ Some\* c) ☐ None of the.
    1. ☒ Certified copies of the priority documents have been received.
    2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\* Certified copies not received: \_\_\_\_\_.

5. ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
  - (a) ☐ The translation of the foreign language provisional application has been received.
6. ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application. **THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.**

7. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
8. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
  - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
    - 1) ☐ hereto or 2) ☐ to Paper No. \_\_\_\_\_.
  - (b) ☐ including changes required by the proposed drawing correction filed \_\_\_\_\_, which has been approved by the Examiner.
  - (c) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No. \_\_\_\_\_.

Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the margin according to 37 CFR 1.121(d).

9. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

## **Attachment(s)**

- 1 ☐ Notice of References Cited (PTO-892)
- 2 ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3 ☐ Information Disclosure Statements (PTO-1449 or PTO/SB/08), Paper No. \_\_\_\_\_
- 4 ☐ Examiner's Comment Regarding Requirement for Deposit of Biological Material
- 5 ☐ Notice of Informal Patent Application (PTO-152)
- 6 ☐ Interview Summary (PTO-413), Paper No. \_\_\_\_\_
- 7 ☐ Examiner's Amendment/Comment
- 8 ☒ Examiner's Statement of Reasons for Allowance
- 9 ☐ Other

## **DETAILED ACTION**

### ***Preliminary Comments***

1. Applicant's Amendments dated 28 August 2003 have placed the Application in a condition for allowance as written. Accordingly, the following represents a reasoned statement for allowability.

### ***Allowable Subject Matter***

2. Claims 1-65 are allowable, since the prior art references, either considered alone or in combination, do not disclose or render obvious the limitations set forth therein.

3. Referring to Claim 1, the prior art references, either considered alone or in combination, do not disclose or render obvious the limitations whereby a visual displacement system comprises a light emitting device which impinges a line beam onto an object, a two-dimensional imaging device for monitoring the object on which the line beam impinges and a range defining means within the field of view of the two-dimensional imaging device, in combination with the remaining limitations in the claim. Claims 2-15 are allowable based on their dependency upon the claim from which each is dependent. Referring to Claim 16, the prior art references, either considered alone or in combination, do not disclose or render obvious the limitations whereby a visual displacement system comprises a light emitting device which impinges a line beam onto an object, a two-dimensional imaging device for monitoring the object on which the line beam impinges and a range defining means within the field of view of the two-dimensional imaging device, in combination with the remaining limitations in the claim. Claims 17-31 are allowable

based on their dependency upon the claim from which each is dependent. Referring to Claim 32, the prior art references, either considered alone or in combination, do not disclose or render obvious the limitations whereby a visual displacement system comprises a light emitting device which impinges a line beam onto an object, a two-dimensional imaging device for monitoring the object on which the line beam impinges and a range defining means within the field of view of the two-dimensional imaging device, in combination with the remaining limitations in the claim. Claims 33-45 are allowable based on their dependency upon the claim from which each is dependent. Referring to Claim 46, the prior art references, either considered alone or in combination, do not disclose or render obvious the limitations whereby a visual displacement system comprises a light emitting device which impinges a line beam onto an object, a two-dimensional imaging device for monitoring the object on which the line beam impinges and a range defining means within the field of view of the two-dimensional imaging device, in combination with the remaining limitations in the claim. Claims 47-59 are allowable based on their dependency upon the claim from which each is dependent. Referring to Claim 60, the prior art references, either considered alone or in combination, do not disclose or render obvious the limitations whereby a visual displacement system comprises a light emitting device which impinges a line beam onto an object, a two-dimensional imaging device for monitoring the object on which the line beam impinges and a range defining means within the field of view of the two-dimensional imaging device, in combination with the remaining limitations in the claim. Claims 61-65 are allowable based on their dependency upon the claim from which each is dependent.

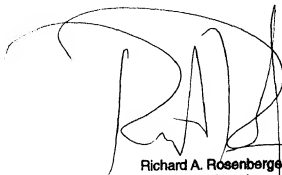
***Comments***

4. As noted in the above paragraph, the subject matter in the instant Application contains allowable subject matter. However, such indication of allowability has not been reached based on Applicants' legal arguments contained in the Amendment dated 28 August 2003, nor the statements concerning the Dong reference. Applicant states that the Dong reference, "neither amounts to disclosure of a range finding element which is used in conjunction with a position sensing detector ..." (Amendment at pg. 18, first full paragraph, emphasis original). However, Dong explicitly states, "the present invention relates to an optical distance sensing system [i.e. a range finding element] using a position sensitive photoreceiver [i.e. a position sensing detector]." (col. 1, lns. 9-11, commentary in brackets added). Accordingly, Applicants' statement concerning the Dong reference is clearly incorrect. Moreover, Applicants argue that there is no motivation to combine the Yoshii and Dong references, citing a litany of cases, none of which were responsive to the motivational statement based on Medtronic, Inc. v. Cardiac Pacemakers, 721 F.2d 1563, 1572-1573, 220 USPQ 97, 103-104 (Fed. Cir., 1983) provided in the previous Office Action, which is cited and discussed at some length in MPEP §2141.01(a) under the heading "35 U.S.C. §103; The Graham v. Deere Factual Inquires". Accordingly, such arguments concerning the motivational statement are an improper rebuttal. Therefore, the Examiner has reconsidered the combination of the Yoshii and Dong references *sua sponte*, and finds that the references should not be combined because they are not analogous art due to the difference in light source arrangements, rather than on the reasons provided by Applicants. The Yoshii reference discloses the use of a line beam which is described therein as a light source forming a "pattern" (col. 5, lns. 19-21). Moreover, it appears from the entire context of the Yoshii

reference that such patterned light source is an integral and necessary part of the invention. By contrast, the Dong reference describes the LED light source 14 as “optically collimated” (col. 3, lns. 57-63), rather than in the form of a pattern or a line beam. It also appears from the entire context of the Dong reference that such collimated light source is an integral and necessary part of the invention. Accordingly, since the references are not analogous art, it would not be obvious to combine the references. Such differences in the Yoshii and Dong references were not addressed in the Amendment dated 28 August 2003. Applicants raised the issue with respect to the Yoshii reference that its coordinate system is fixed in relation to the wafer surface, whereas the instant invention has a coordinate system which is within the field of view of the two-dimensional imaging device. Such represents an adequate consideration, and is thus also a basis for allowability.

***CONCLUSION***

5. Applicants' Claims 1-65 are allowed based on the reasons set forth above.
6. Applicants have cancelled Claims 66 and 67 prior to examination.
7. Any inquiries concerning this communication from the Examiner should be directed to Vincent P. Barth, whose telephone number is 703-605-0750, and who may be ordinarily reached from 9:00 a.m. to 5:30 p.m., Monday through Friday. The official fax number for communications to the group is 703-872-9306. Note that this fax number is new, and replaces the numbers provided in previous communications from the group.
8. If attempts to reach the Examiner prove unsuccessful, the Examiner's supervisor is Frank G. Font, who may be reached at 703-308-4881.
9. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1782.



Richard A. Rosenberger  
Primary Examiner